* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 01 April 2024**
Judgment pronounced on : 08 May 2024

\+ MAC.APP. 305/2021 & CM APPL. 42287/2021, CM APPL. 42289/2021

UNITED INDIA INSURANCE CO.LTD ..... Appellant
Through: Mr. Sankar N. Sinha, Adv.

versus

SMT SOMTI DEVI AND OTHERS ..... Respondents
Through: Mr. Mercy Hussain & Ms. Kirti Singh, Advs. for R8/DTC.
Mr. Anshuman Bal, Adv. for R1 to R6.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant/insurance company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988[1], seeking modification of the judgment-cum-award dated 11.10.2021 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Central District, Tis Hazari Courts, Delhi[2] in claim petition bearing MACT No. 56306/2016 titled as 'Smt. Somti Devi & Ors. v. Mahender Singh & Ors.'

2. Shorn of unnecessary details, Rishipal @ Rishipal Singh aged about 32 years sustained fatal injuries in a motor accident on

[1] M. V. Act
[2] Tribunal

03.11.2014 that occurred at about 1.30 p.m. near Gate No.4 of Metro Station, Kashmere Gate, Delhi when TSR[3] No. DL-1RL-2032, in which he was travelling, driven by its driver dashed against a parked DTC[4] bus bearing registration No. DL-1PB-1506 (*hereinafter referred as the 'offending vehicle'*) against its front right side tyre portion.

3. The claimants, who are the wife, four children and mother of the deceased filed a claim petition under Section 163A of the MV Act against the respondent No.1/driver and the registered owner/respondent No.2 of the offending bus. While the offending vehicle, which was evidently insured with the respondent No.3, the TSR was not insured for third party risks. The respondents No.1 and 2 filed common written statement and *inter alia* took a preliminary objection that the accident was not caused due to the rash and negligent driving on the part of the driver of the offending vehicle but on the part of the driver of the ill-fated TSR.

4. Learned Tribunal decided the issue as regard the factum of accident and the culpability in the following manner:

> "11. The pleadings of the parties, as discussed above in brief, demonstrate that there is no dispute about the occurrence of a motor vehicular accident on 03.11.2014. The facts surrounding the occurrence of accident are detailed in DAR Ex PW 1/8 and are mentioned in brief in the aforegoing paragraphs. As per DAR Ex PWl/8, the deceased was travelling in a TSR when the same dashed against the offending vehicle which was parked on the side of the road. This version of DAR is relied upon by petitioners and is also reflected in the pleadings of the respondents. Also there is no dispute about the fact that the deceased was taken to a hospital immediately after the said accident and was declared as brought dead.

[3] Three-seater auto rickshaw
[4] Delhi Transport Corporation

12. Here a legal objection has been raised -on behalf of R-3/Insurance company to the effect that the primary liability in respect of the said accident lies on the driver and owner of the TSR (TSR was uninsured at the time of accident) as it is an admitted case that the TSR dashed against a stationary vehicle i.e. offending vehicle. It has been argued on behalf of R-3/ Insurance Company that but for the rashness and negligence of driver of TSR, the deceased would have been alive and therefore, liability may be fixed against the driver and owner of the TSR only. It is further argued that the above facts and circumstances are sufficient to absolve R-3/ Insurance Company who is the insurer of the offending vehicle. R-3/ Insurance company relies upon the observations made by the Hon'ble High Court in IFFCO TOKIO General Insurance Co. Ltd. Vs Smt. Babita & Ors., MAC APP No. 149/2012 decided on 14.08.2012.

13. In the considered opinion of this Tribunal, the said objection raised by R-3/ Insurance Company is misplaced, firstly for the reason that the offending vehicle was not parked in a parking lot at the relevant time. Admittedly, the offending vehicle (which was a DTC bus) was parked on a busy road by R-1 after one road trip of the offending vehicle had been completed. The Victim Impact Report placed on records by IO reflects that the accident took place in the central lane of a two way road. Admittedly, the offending vehicle was parked on the left side of the road, but still, as per Victim Impact Report the accident took place in the central lane. It is apparent that the offending vehicle was protruding onto the central lane at the relevant time. Parking the offending vehicle in such a manner as to obstruct traffic that too at an unauthorised location is a clear cut violation of the provisions of Rules of Road Regulations, 1989. It is no longer in dispute that the word "use", in the context of Motor Vehicles Act, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary, being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect. In such circumstances, R-3/ Insurance Company could not escape liability merely by claiming that the offending vehicle was stationary and was parked at the relevant time. The argument that the driver of the TSR was rash and negligent and was therefore responsible for the occurrence of accident is also specious as Section 163A MV Act does not require the petitioners to plead or prove "rashness or negligence". Lastly, R-3/ Insurance could not seek division of liability as to compensation between itself, being the insurer of the offending vehicle, and the driver and owner of the TSR as the judgment relied upon by R-3/ Insurance Company, (i.e. IFFCO TOKIO GENERAL INSURANCE VS. SMT.

> BABITA) itself provides a choice to the present petitioners to choose whether to claim compensation from the owner, driver and insurer of the offending vehicle or from the owner, driver of the TSR. If the petitioners have chosen to proceed against the driver/ owner of the offending vehicle, then R-3/ Insurance Company has no right to challenge their choice, nor could the petitioners be non-suited for this choice.
> 14. In view of the above discussion, it is safe to hold that the deceased lost his life in an accident arising out of the use of offending vehicle and this issue, sans the ingredients of "rashness or negligence", is accordingly decided in favour of the petitioners and against the respondents."

5. In view of the above, the claimants were made entitled to payment of compensation and it was decided as under:-

> "15. As the fatal accident has arisen out of the use of offending vehicle, accordingly, as per Second Schedule annexed to M. V. Act, as amended up to date, compensation to the tune of Rs.5,00,000/- is admissible to the petitioners. The petitioners are also entitled to be granted a sum of Rs. 15,000/- each towards funeral expenses and loss of estate. Each of the petitioners is also entitled to be granted a sum of Rs. 40,000/- each towards consortium(spousal, parental and filial as the case may be). The petitioners are thus awarded a sum of Rs. 7,70,000/- (Rupees Seven Lakhs Seventy Thousand only) (Rs. 15,000/- + Rs. 15,000/- + Rs. 40,000/- + Rs. 40,000/+Rs. 40,000/- + Rs. 40,000/- + Rs. 40,000/- + Rs. 40,000/- + Rs.5,00,000/-) on account of the untimely death of the deceased in a motor vehicular accident dated 03.11.2014."

ANALYSIS AND DECISION:

6. Having heard the learned counsels for the rival parties and on perusal of the record including the digitized Trial Court Record, although the plea raised by the learned counsel for the appellant/insurance company that there was no fault on the part of the respondent No.1/driver of the offending vehicle in causing the accident is clearly borne out from the record, but it does not cut any ice when it comes to the maintainability of the claim petition under

Section 163A of the MV Act. It would be apposite to invite reference to decision in **Ningamma v. United India Insurance Co. Ltd.**[5], wherein the Supreme Court had an occasion to explain the scope and ambit of Section 163A of the MV Act and it was held as under:-

> **"14.** Section 163-A of the MVA was inserted by Act 54 of 1994 by way of a social security scheme. It is needless to say that the said provision is a code by itself. The said provision has been inserted to provide for a new predetermined structured formula for payment of compensation to road accident victims on the basis of age/income of the deceased or the person suffering permanent disablement. In view of the language used in said section there could be no manner of doubt that the said provision has an overriding effect as it contains a non obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay compensation in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.
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> **15.** A number of decisions have been rendered by this Court in respect of Section 163-A of the MVA. In *Deepal Girishbhai Soni* v. *United India Insurance Co. Ltd.* [(2004) 5 SCC 385 : 2004 SCC (Cri) 1623] , at p. 402, one of us (Hon'ble S.B. Sinha, J.) has observed as follows: (SCC p. 402, para 42)
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> "*42*. Section 163-A was, thus, enacted for grant of immediate relief to a section of the people whose annual income is not more than Rs 40,000 having regard to the fact that in terms of Section 163-A of the Act read with the Second Schedule appended thereto, compensation is to be paid on a structured formula not only having regard to the age of the victim and his income but also the other factors relevant therefor. An award made thereunder, therefore, shall be in full and final settlement of the claim as would appear from the different columns contained in the Second Schedule appended to the Act. The same is not interim in nature. The note appended to Column 1 which deals with fatal accidents makes the position furthermore clear stating that from the total amount of compensation one-third thereof is to be reduced in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. This together with the other heads of compensation as contained in Columns 2 to 6 thereof

[5] (2009) 13 SCC 710

leaves no manner of doubt that Parliament intended to lay a comprehensive scheme for the purpose of grant of adequate compensation to a section of victims who would require the amount of compensation without fighting any protracted litigation for proving that the accident occurred owing to negligence on the part of the driver of the motor vehicle or any other fault arising out of use of a motor vehicle."

16. This Court further observed in *Oriental Insurance Co. Ltd.* v. *Meena Variyal* [(2007) 5 SCC 428 : (2007) 2 SCC (Cri) 527] : (SCC pp. 442 & 445-46, paras 18 & 27-28)

"*18.* In *New India Assurance Co. Ltd.* v. *Asha Rani* [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] this Court had occasion to consider the scope of the expression 'any person' occurring in Section 147 of the Act. This Court held: (SCC p. 235, para 26)

'*26.* … that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor.'

In other words, this Court clearly held that the apparently wide words 'any person' are qualified by the setting in which they occur and that 'any person' is to be understood as a third party.

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27. We think that the law laid down in *Minu B. Mehta* v. *Balkrishna Ramchandra Nayan* [(1977) 2 SCC 441] was accepted by the legislature while enacting the Motor Vehicles Act, 1988 by introducing Section 163-A of the Act providing for payment of compensation notwithstanding anything contained in the Act or in any other law for the time being in force that the owner of a motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be, and in a claim made under sub-section (1) of Section 163-A of the Act, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned. Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under

Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle.

28. In *PushpabaiPurshottamUdeshi* v. *Ranjit Ginning & Pressing Co. (P) Ltd.* [(1977) 2 SCC 745] two of the learned Judges who constituted the Bench in *Minu B. Mehta* [(1977) 2 SCC 441] held that when a car is driven by the owner's employee on owner's business, the normal rule was that it was for the claimant for compensation to prove negligence. When the Manager of the owner while driving the car on the business of the owner took in a passenger, it would be taken that he had the authority to do so, considering his position unless otherwise shown. If due to his negligent driving an accident occurred and the passenger died, the owner would be liable for compensation. The Court noticed that the modern trend was to make the master liable for acts of his servant which may not fall within the expression 'in the course of his employment' as formerly understood. With respect, we think that the extensions to the principle of liability have been rightly indicated in this decision."

17. The aforesaid decisions make it quite clear that Parliament by introducing Section 163-A in the MVA provided for payment of compensation on structured formula basis by mandating that the owner of a motor vehicle or the authorised insurer would be liable to pay compensation, as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of the motor vehicle, to the legal heirs or the victim, as the case may be in a claim made under sub-section (1) of Section 163-A of the MVA. In order to prove a claim of this nature the claimant would not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned.

7. In view of the aforesaid proposition of law, reverting to the instant matter, the offending vehicle presumably was being plied before the accident and at the time of accident it was parked in a

public place[6] and the same was accordingly in 'use' in the context of the MV Act. The observations which have been spelled out by the learned Tribunal in this regard cannot be faulted in law. In other words, the wrong manner of the parking of the offending bus at a public place would also be sufficient to impute "use" of the vehicle on the road. By virtue of section 163A of the MV Act, the claimants are not enjoined upon to prove any culpability of the driver of the offending bus either.

8. In view of the foregoing discussion, the present appeal filed by the appellant/insurance company is dismissed. The claimants are made entitled to a total compensation of Rs.7,70,000/- with interest @ 6% from the date of filing of the petition i.e. 13.11.2014 till realization, which be deposited with the learned Tribunal within four weeks from today, failing which the appellant/insurance company shall be liable to pay penal interest @ 10% per annum from the date of this judgment till realization. On such deposit, amount be released to the claimants forthwith as per directions of the learned Tribunal.

9. The amount of Rs. 25,000/- towards the statutory deposit for filing of the appeal is hereby forfeited to the State.

10. The present appeal along with the pending applications stands disposed of.

DHARMESH SHARMA, J.

MAY 08, 2024
Sadiq

[6] 2(34) "public place" means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.